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Mass Gov. Home

State Agencies

State Online Services

DOR Home

For Individuals and Families

For Businesses

For Local Officials

For Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > 1984 and Prior > 1984 Rulings >

Letter Ruling 84-43: Withholding for Non-Resident Employees; Apportionment

June 25, 1984

\_\_\_\_\_ ("Company") is in the business of taking and selling photographic portraits in retail stores throughout the country. Employees of the Company report weekly to regional offices, from which they pick up supplies, receive assignments, attend meetings, and complete paperwork. Employees may or may not live in the state of the regional office to which they report and may or may not incur any sales during a week within that state. You inquire as to the proper method of Massachusetts income tax withholding for non-resident employees who report to your regional office in Massachusetts. Under present policy, the company withholds Massachusetts income tax based upon an employee's weekly wages.

Non-residents of Massachusetts are subject to Massachusetts income taxation on items of gross income from sources within Massachusetts, which are those items derived from or effectively connected with (1) any trade or business, including any employment carried on by the taxpayer in Massachusetts; (2) the participation in any lottery or wagering transaction within Massachusetts; or (3) the ownership of any interest in real or tangible personal property located in Massachusetts. (G.L. c. 62, § 5A(a)).

Every employer making payment to employees of wages subject to tax under General Laws Chapter 62 shall deduct and withhold a tax upon such wages. (G.L. c. 62B, § 2).

Compensation for services rendered by a non-resident wholly outside Massachusetts, even though payment may be made from an office or place of business in Massachusetts of the employer, is not subject to the individual income tax. Where an individual is paid a salary and his employer requires that he perform services both within and without Massachusetts, only that portion of his salary attributable to his work in Massachusetts will be taxed.

The income of employees who are compensated on an hourly, daily, weekly or monthly basis is to be allocated to Massachusetts in the proportion that the amount of time spent working in Massachusetts bears to total working time. In the case of an employee whose compensation, in whole or part, depends upon sales, taxable income includes that portion of total compensation received which the sales made within Massachusetts bear to total sales.

For purposes of Massachusetts income tax withholding, the Company should withhold taxes only upon that portion of each non-resident employee's weekly wages which is attributable to work performed in Massachusetts. When filing Massachusetts non-resident income tax returns (Form 1-NR), your employees should follow the instructions on the apportionment of income from within and without Massachusetts.

Very truly yours,

/s/Ira A. Jackson

Commissioner of Revenue

IAJ:VGS:mf

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